IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 22531 of 1996

Between:

A.P.S.R.T.C. Rep. by its Managing Director
Mushirabad, Hyderabad.

..... PETITIONER

AND

1 The Joint Transport Commissioner and Secretary,

Regional Transport Authority Hyderabad.
2 The Licensing Officer, Regional Transport Authority,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records relating to the impugned proceedings in Memo No. 19391/D2/96 dt. 23-3-96 on the file of the 2nd respondent as confirmed in Proc.No. 7129/D2/96 dt. 23-7-96 by the Ist respondent and quash the same are arbitrary and illegal by

way of issue of writ of certiorari or any other appropriate writ or order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:Mr.K.SRINIVASA RAO

Counsel for the Respondent No.: GP FOR TRANSPORT

The Court made the following :

<u>O R D E R (Per MHSA,J)</u>

Heard Sri K.Srinivasa Rao, learned Standing Counsel for A.P.S.R.T.C. and learned Government Pleader for Transport.

2. As the matter is squarely covered by a Division Bench judgment of this Court in D.M., APSRTC, HYD. V. TRANSPORT COMMR. A.P. HYD., only certain relevant facts need to be stated. They are that the petitioner A.P.S.R.T.C. is plying certain vehicles both as stage carriage and as contract carriage on the approved schemes. It is not in dispute that the permits have also been obtained by the petitioner to ply major part as stage carriages and one or two trips as contract carriages. However, the respondent – licencing authority being of the view that the rate of tax taxable to contract carriages is higher than the rate of tax to stage carriages, issued show cause notice as to why the higher rate of tax be not levied. The explanation furnished by the petitioner was not found suitable and accordingly orders were passed directing the petitioner to pay the difference of tax within seven days from the date of receipt of the demand notice and the same has been confirmed by the appellate authority. It is this order of the 1st respondent dated 23.7.1996 that has been questioned in the instant writ petition.

3. In Depot Manager's case (1 supra) Division Bench of this Court considered a similar question and held as under:

> "7. In the present case also, even according to the permit granted to the petitioner the vehicles fall both under Item No.4(iii) as stage carriage as well as under Item No.4(v) as contract carriage. Even if the tax is to be levied on the basis of the user the only way to resolve this issue is to take the regular and greater use of the vehicles which are primarily registered as stage carriage vehicles. The permitted additional trips on contract carriages for servicing Schools, Colleges, Offices, etc., does not detract from the main use of the vehicles as stage carriage vehicles. In our view, therefore, it is not possible to take these vehicles out of the category of stage carriages in Item No.4(iii) and fit them in to the category of contract carriages in Item No.4(v) only because of permitted additional use to service colleges, offices, etc., on certain occasions."

4. Respectfully following the said judgment of the coordinate Bench of this Court, the impugned demand raised by the respondent – authority is liable to be and is hereby quashed.

5. Writ petition is accordingly allowed. No order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS

DATE:28.01.2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday the 28th day of January, two thousand and five.

Registrar

To

1 The Joint Transport Commissioner and Secretary,

Regional Transport Authority Hyderabad.

2 The Licensing Officer, Regional Transport Authority, Hyderabad.

3. Two C.Cs. to G.P. for Transport, A.P. High Court, Blds

(out).

4. Two C.D. copies.